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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

TRILEISE BARBER, individually and) Case No.
on behalf of all others similarly situated.)

Plaintiff,) _____

vs.) **COMPLAINT FOR VIOLATIONS**
) **OF:**

SANTANDER CONSUMER USA,
INC.,) 1. NEGLIGENCE VIOLATIONS
) OF THE TELEPHONE
CONSUMER PROTECTION

Defendants.) 2. SEQ.J
) WILLFUL VIOLATIONS
) OF THE TELEPHONE

) **OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]**

)
)
) **DEMAND FOR JURY TRIAL**

Plaintiff, TRILEISE BARBER (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable

1 remedies resulting from the illegal actions of SANTANDER CONSUMER USA,
 2 INC., (“Defendant”), in negligently, knowingly, and/or willfully contacting
 3 Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer
 4 Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”), thereby invading Plaintiff’s
 5 privacy.

6 **JURISDICTION & VENUE**

7 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,
 8 a resident of Pennsylvania, seeks relief on behalf of a Class, which will result in
 9 at least one class member belonging to a different state than that of Defendant, a
 10 company with its principal place of business in Texas and State of Incorporation
 11 in Illinois. Plaintiff also seeks up to \$1,500.00 in damages for each call in
 12 violation of the TCPA, which, when aggregated among a proposed class in the
 13 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
 14 Therefore, both diversity jurisdiction and the damages threshold under the Class
 15 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has
 16 jurisdiction.

17 3. Venue is proper in the United States District Court for the
 18 WESTERN District of Pennsylvania pursuant to *18 U.S.C. 1391(b)* and *18*
 19 *U.S.C. § 1441(a)* because Defendant does business within the state of
 20 Pennsylvania and the county of Allegheny.

21 **PARTIES**

22 4. Plaintiff, TRILEISE BARBER (“Plaintiff”), is a natural person
 23 residing in Allegheny, Pennsylvania and is a “person” as defined by *47 U.S.C. §*
 24 *153 (39)*.

25 5. Defendant, SANTANDER CONSUMER USA, INC. (“Defendant”),
 26 is in the business of providing loans, and is a “person” as defined by *47 U.S.C. §*
 27 *153 (39)*.

28 6. The above named Defendant, and its subsidiaries and agents, are

collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning in or around July of 2017, Defendant contacted Plaintiff on her cellular telephone, number ending in -7075, in an attempt to collect an alleged outstanding debt owed.

9. However, Plaintiff has never owed such a debt to Defendant and has never provided her contact information to Defendant. In addition, Plaintiff informed Defendant multiple times that Plaintiff is not the owner of this debt and to cease calling her.

10. Despite this, Defendant continued to contact Plaintiff multiple times to collect on this alleged debt.

11. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect the debt allegedly owed.

12. Defendant's calls constituted calls that were not for emergency

purposes as defined by 47 U.S.C. § 227(b)(1)(A).

13. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

14. Plaintiff told the Defendant that Plaintiff did not owe the alleged debt and not to contact Plaintiff.

15. Despite receiving this information on numerous occasions, Defendant continued to place daily calls to Plaintiff, on her cellular telephone, using an “automated telephone dialing system.”

16. Plaintiff does not owe the alleged debt Defendant is calling her about and has never provided any personal information, including her cellular telephone number, to Defendant for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action on behalf of herself and all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

All persons within the United States who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

18. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any

1 automatic telephone dialing system and such person had not previously not
2 provided their cellular telephone number to Defendant within the four years prior
3 to the filing of this Complaint.

4 19. Defendant, its employees and agents are excluded from The Class.
5 Plaintiff does not know the number of members in The Class, but believes the
6 Class members number in the thousands, if not more. Thus, this matter should be
7 certified as a Class Action to assist in the expeditious litigation of the matter.

8 20. The Class is so numerous that the individual joinder of all of its
9 members is impractical. While the exact number and identities of The Class
10 members are unknown to Plaintiff at this time and can only be ascertained
11 through appropriate discovery, Plaintiff is informed and believes and thereon
12 alleges that The Class includes thousands of members. Plaintiff alleges that The
13 Class members may be ascertained by the records maintained by Defendant.

14 21. Plaintiff and members of The Class were harmed by the acts of
15 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
16 and Class members via their cellular telephones thereby causing Plaintiff and
17 Class members to incur certain charges or reduced telephone time for which
18 Plaintiff and Class members had previously paid by having to retrieve or
19 administer messages left by Defendant during those illegal calls, and invading the
20 privacy of said Plaintiff and Class members.

21 22. Common questions of fact and law exist as to all members of The
22 Class which predominate over any questions affecting only individual members
23 of The Class. These common legal and factual questions, which do not vary
24 between Class members, and which may be determined without reference to the
25 individual circumstances of any Class members, include, but are not limited to,
26 the following:

27 a. Whether, within the four years prior to the filing of this
28 Complaint, Defendant made any collection call (other than a

1 call made for emergency purposes or made with the prior
2 express consent of the called party) to a Class member using
3 any automatic telephone dialing system to any telephone
4 number assigned to a cellular telephone service;

5 b. Whether Plaintiff and the Class members were damages
6 thereby, and the extent of damages for such violation; and
7 c. Whether Defendant should be enjoined from engaging in such
8 conduct in the future.

9 23. As a person that received numerous collection calls from Defendant
10 using an automatic telephone dialing system, without Plaintiff's prior express
11 consent, Plaintiff is asserting claims that are typical of The Class.

12 24. Plaintiff will fairly and adequately protect the interests of the
13 members of The Class. Plaintiff has retained attorneys experienced in the
14 prosecution of class actions.

15 25. A class action is superior to other available methods of fair and
16 efficient adjudication of this controversy, since individual litigation of the claims
17 of all Class members is impracticable. Even if every Class member could afford
18 individual litigation, the court system could not. It would be unduly burdensome
19 to the courts in which individual litigation of numerous issues would proceed.
20 Individualized litigation would also present the potential for varying, inconsistent,
21 or contradictory judgments and would magnify the delay and expense to all
22 parties and to the court system resulting from multiple trials of the same complex
23 factual issues. By contrast, the conduct of this action as a class action presents
24 fewer management difficulties, conserves the resources of the parties and of the
25 court system, and protects the rights of each Class member.

26 26. The prosecution of separate actions by individual Class members
27 would create a risk of adjudications with respect to them that would, as a practical
28 matter, be dispositive of the interests of the other Class members not parties to

such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

27. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the Pennsylvania Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-27.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

30. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

(Against All Defendants)

32. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-31.

33. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
2 *seq.*

3 34. As a result of Defendant's knowing and/or willful violations of *47*
4 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
5 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
6 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

7 35. Plaintiff and the Class members are also entitled to and seek
8 injunctive relief prohibiting such conduct in the future.

9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

12

13 **FIRST CAUSE OF ACTION**

14 **Negligent Violations of the Telephone Consumer Protection Act**

15 **47 U.S.C. §227 et seq.**

16 • As a result of Defendant's negligent violations of *47 U.S.C. §*
17 *227(b)(1)*, Plaintiff and the Class members are entitled to and
18 request \$500 in statutory damages, for each and every violation,
19 pursuant to *47 U.S.C. § 227(b)(3)(B)*.
20 • Any and all other relief that the Court deems just and proper.

21 **SECOND CAUSE OF ACTION**

22 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
23 **Act**

24 **47 U.S.C. §227 et seq.**

25 • As a result of Defendant's willful and/or knowing violations of *47*
26 *U.S.C. § 227(b)(1)*, Plaintiff and the Class members are entitled to
27 and request treble damages, as provided by statute, up to \$1,500, for
28 each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and

1 *47 U.S.C. § 227(b)(3)(C).*

2 • Any and all other relief that the Court deems just and proper.

3

4 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**

5 Respectfully Submitted this 20th Day of September, 2017.

6

7 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

8

9 By: s/ Cynthia Z. Levin

10 Cynthia Z. Levin

11 Law Offices of Todd M. Friedman

12 Attorney for Plaintiff